Datuk Amar James Wong Kim Min & Anor v Pendaftar Pertubuhan

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–137 OF 2002
RAUS SHARIF J
15 SEPTEMBER 2006

Unincorporated Associations — Societies — Political party — Leadership crisis between two groups — Notice issued by ROS under s 16(1) and 13(2) — ROS was not satisfied with the identity of the persons who have been properly appointed as office bearers — Society de-registered — Whether measure taken by ROS was disproportionate and too severe — Societies Act 1966 ss 16(1), 13(2)

The applicants were, at the material time, the duly elected President and Secretary-General of Parti Kebangsaan Sarawak ('SNAP') respectively. SNAP was registered as a political society under the Societies Act 1966 ('the Act') on 10 April 1961. Sometime in 2002, a leadership crisis had occurred in SNAP between two groups. One group was led by the President, whilst the other group was led by the Deputy President. The Registrar of Society ('ROS'), on 2 July 2002 issued a notice under s 16(1) of the Act. In the notice the ROS informed SNAP that he was of the opinion that a dispute had occurred among the office bearers of SNAP, as a result of which he was not satisfied with the identity of the persons who had been properly constituted as the office bearers of SNAP. Hence, SNAP was asked to produce evidence of a settlement of any such dispute and of a proper appointment of the lawful office bearers of SNAP or of the institution of proceedings for the settlement of such dispute. On 19 July 2002, the Secretary General of SNAP i.e. the second applicant, responded to the ROS's notice, stating that the President's group was the lawful office bearers of SNAP and claimed that the actions taken by the group led by the Deputy President were illegal and ultra vires the party's constitution. The group led by the Deputy President in their letter dated 26 July 2002, defended the legitimacy of their actions. The ROS, by a letter dated 13 September 2002, issued another notice and this time under s 13(2) of the Act, requiring SNAP to produce evidence of settlement of the disputes and of the proper appointment of the lawful office bearers of SNAP or of the institution of proceedings for the settlement of the disputes. Again both group replied claiming themselves to be the lawful office bearers of SNAP and pointed out the acts done by each other as illegal and unconstitutional. On 5 November 2002, the ROS issued his decision to cancel the registration of SNAP under s 13(1)(c)(ix) of the Act. The second applicant applied for an order of certiorari to quash the decision of the ROS. The applicant relied on two main grounds to quash the decision of the ROS, namely: (i) procedural unfairness and (ii) substantive unfairness.

Held, dismissing the application with costs:

(1) The scheme of ss 16 and 13 of the Act does not require the ROS to give the applicant the right to be heard before the ROS is to 'to form an opinion that a dispute had occurred or that the ROS was not satisfied with the identity of the persons who have been properly appointed as office bearers'. To subscribe to the applicant's submission would tantamount to adding words to the sections which this court must always 'guard itself against adding words which were never intended by Parliament' (see para 19).

(2) It is an established position of the law that there is no general duty universally imposed on all decision makers to give reasons for their decision. Secondly, ss 16(1) and 13 of the Act do not require the ROS to give reasons for his decision. There is no express statutory duty imposed on the ROS to give reasons to the applicant (see para 21).

(3) The issues raised by the applicant under the heading of substantive unfairness is devoid of any merit. The first issue raised by the applicant was that the decision of the ROS to de-register SNAP was disproportionate and too severe a measure to be taken against a society as established as SNAP. The answer is that, it is not the duty of this court to substitute its own view as to what is the appropriate or lesser measure ought to be taken by the ROS (see para 25).

(4) On the facts of this case it is beyond doubt that a dispute does exist within SNAP. Accordingly, the ROS was right to issue the notice under s 16(1) and subsequently under s 13(2) of the Act. As the ROS was not furnished with the evidence of settlement of the dispute or institution of proceedings for settlement of the dispute, the ROS was right to cancel the registration of SNAP. What the ROS did was merely complying with the statutory provisions of the Act (see para 27).

[Bahasa Malaysia summary

Pemohon-pemohon adalah pada kesemua masa yang material, masing-masing Presiden dan Setiausaha Agung Parti Kebangsaan Sarawak ('SNAP') yang dilantik seperti yang sepatutnya. SNAP didaftarkan sebagai pertubuhan politik di bawah Akta Pertubuhan 1966 ('Akta tersebut'). pada 10 April 1961. Pada 2002, terdapat krisis di pucuk pimpinan SNAP di antara dua kumpulan. Satu kumpulan diketuai oleh Presiden, sementara satu lagi kumpulan diketuai oleh Timbalan Presiden. Pendaftar Pertubuhan (ROS), telah pada 2 Julai 2002 mengeluarkan satu notis di bawah s 16(1) Akta tersebut. Dalam notis itu, ROS memaklumkan kepada SNAP bahawa beliau berpendapat terdapat pertikaian di kalangan pemegang jawatan SNAP, dan dengan itu beliau tidak puas hati dengan identiti orang-orang yang membentuk dengan betul pemegang-pemegang jawatan SNAP. Dengan itu SNAP dipanggil membuktikan satu penyelesaian terhadap sebarang pertikaian dan pelantikan yang betul pemegang-pemegang jawatan yang sah SNAP atau sebarang prosiding yang telah diambil untuk menyelesaikan sebarang pertikaian. Pada 19 Julai 2002, Setiausaha Agung SNAP, iaitu pemohon kedua, menjawab notis ROS, menyatakan bahawa kumpulan Presiden adalah pemegang-pemegang jawatan yang sah di SNAP dan menyatakan bahawa tindakan-tindakan yang diambil oleh kumpulan yang diketuai Timbalan Presiden adalah menyalahi undang-undang dan ultra vires perlembagaan

parti tersebut. Kumpulan yang diketuai oleh Timbalan Presiden melalui surat mereka bertarikh 26 Julai 2002 mempertahankan kesahan tindakan-tindakan mereka. ROS, melalui surat bertarikh 13 September 2002, mengeluarkan satu lagi notis dan kali ini di bawah s 13(2) Akta tersebut, menghendaki SNAP melampirkan bukti-bukti penyelesaian pertikaian dan juga pelantikan yang betul pemegang-pemegang jawatan yang sah SNAP atau sebarang prosiding yang telah diambil untuk menyelesaikan sebarang pertikaian. Lagi sekali kedua-dua kumpulan menjawab mendakwa diri mereka sebagai pemegang-pemegang jawatan yang sah di SNAP dan menunjukkan bahawa tindakan-tindakan yang dilakukan oleh kumpulan yang lain sebagai menyalahi undang-undang dan tidak mengikuti perlembagaan. Pada 5 November 2002, ROS mengeluarkan keputusannya membatalkan pendaftaran SNAP di bawah s 13(1)(c)(ix) Akta tersebut. Pemohon kedua memohon untuk satu perintah certiorari untuk membatalkan keputusan ROS. Pemohon berdasarkan atas dua alasan untuk membatalkan keputusan ROS, iaitu: (i) ketidakadilan prosedur dan (ii) ketidakadilan substantif.

Diputuskan, menolak permohonan tersebut dengan kos:

(1) Skim s 16 dan 13 Akta tersebut tidak memerlukan ROS memberikan pemohon hak untuk didengar sebelum ROS 'untuk membentuk satu pendapat bahawa sesuatu pertikaian telah berlaku atau bahawa ROS tidak puas hati dengan identiti orang-orang yang dilantik dengan betul sebagai pemegang jawatan'. Sekiranya berpegang kepada hujahan pemohon akan sama seperti menambahkan perkataan-perkataan kepada seksyen di mana mahkamah mesti sentiasa 'berwaspada terhadap penambahan perkataan yang tidak dimaksudkan oleh Parlimen' (lihat perenggan 19).

(2) Adalah kedudukan mantap undang-undang lazim bahawa tidak terdapat sebarang tugas am, yang secara keseluruhannya dikenakan ke atas semua pembuat-pembuat keputusan untuk memberi alasan-alasan keputusan mereka. Keduanya, s 16(1) dan s 13 Akta tersebut tidak memerlukan ROS untuk memberi alasan keputusannya. Tidak terdapat tugas statutori nyata yang dikenakan terhadap ROS untuk memberikan alasan-alasan kepada pemohon (lihat perenggan 21).

(3) Isu-isu yang dibangkitkan oleh pemohon di bawah tajuk ketidakadilan substantif adalah tanpa merit. Isu pertama yang dibangkitkan oleh pemohon ialah keputusan ROS membatalkan pendaftaran SNAP adalah tidak seimbang dan langkah yang diambil adalah berketerlaluan terhadap sesebuah pertubuhan yang kukuh seperti SNAP. Jawapannya ialah, ia bukan tugas mahkamah untuk menggantikan pendapatnya atas apa yang lebih sesuai atau langkah yang tidak berketerlaluan yang harus diambil oleh ROS (lihat perenggan 25).

(4) Pada fakta-fakta kes ini adalah melampaui keraguan bahawa satu pertikaian sebenarnya wujud di dalam SNAP. Dengan itu, ROS adalah betul dalam mengeluarkan notis di bawah s 16(1) dan kemudiannya di bawah s 13(2) Akta tersebut. Oleh kerana ROS tidak dibekalkan dengan bukti penyelesaian pertikaian tersebut ataupun sebarang prosiding yang telah diambil untuk menyelesaikan sebarang pertikaian, ROS adalah betul dalam membatalkan

pendaftaran SNAP. Apa yang dilakukan oleh ROS adalah hanya mengikut peruntukan-peruntukan statutori Akta tersebut (lihat perenggan 27).]

Notes

For a case on political party, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2434.

Cases referred to

Datuk Amar James Wong Kim Min & Anor v Pendaftar Pertubuhan [2004] 6 MLJ 235 (refd)

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114 (refd)

PV Das (on behalf of himself and the People's Progressive Party) v Pendaftar Pertubuhan Malaysia [2000] 1 MLJ 691 (refd)

Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan [2002] 3 MLJ 72 (folld)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487 (refd)

Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169 (refd)

Legislation referred to

Societies Act 1966 ss 13(1)(c)(ix), (2), 16(1)

Khoo Guan Huat (TH Foo with him) (Skrine) for the applicant.

Azizah Hj Nawawi (Senior Federal Counsel, Attorney-General's Chambers) for the respondent.

Raus Sharif J:

[1] This is an application by the applicants for the following relief:

(a) an order of certiorari to quash the decision of the Registrar of Societies ('ROS') dated 5 November 2002, in cancelling the registration of Parti Kebangsaan Sarawak ('SNAP');

(b) a declaration that the decision of the ROS dated 5 November 2002, in cancelling the registration of SNAP is void and of no effect;

(c) an order that damages be assessed;

(d) costs to be paid to the applicants; and

(e) such further or other relief as the court deem fit.

[2] The applicants were, at the material time, the duly elected President and Secretary-General of SNAP respectively. SNAP was registered as a political society under the Societies Act 1966 ('the Act') on 10 April 1961. Since then SNAP had been actively involved in the Malaysian political scene, particularly in the State of Sarawak.

[3] Sometime in 2002, a leadership crisis had occurred in SNAP between two groups. One group was led by the President, Dato' Amar James Wong, whilst the other group was led by the Deputy President, Dato' Sri Peter Tinggom.

A **[4]** The trouble surfaced when the Deputy President, in the absent of the President, convened the Central Executive Council ('CEC') of the party on 29 May 2002. At the meeting, five additional CEC members were appointed and inter alia resolved that a National Council Meeting needed to be convened and had accordingly fixed 9 June 2002 as the date for the meeting.

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[5] However, the National Council Meeting scheduled on 9 June 2002 was aborted due to the injunction taken out by the President. The President had on 7 June 2002, two days before the National Council Meeting, called and presided a CEC meeting comprising of members aligned to him. In the meeting, they condemned the CEC C meeting that was called and presided by the Deputy President and declared that the meeting presided by the Deputy President was illegal.

[6] On 22 June 2002, the President suspended the Deputy President's membership in SNAP. The suspension was confirmed by the CEC meeting aligned to the D President on 27 June 2002.

[7] Meanwhile, the injunction taken by the President was set-aside on 9 June 2002. With the injunction being set aside, the National Council Meeting as proposed by the group aligned to the Deputy President was held on 23 June 2002. At the National E Council Meeting, the duties of the President, Vice President, Secretary General, Deputy and Assistant Secretary General were suspended. The Deputy President assumed the post and duties as Acting President.

[8] With above development brewing in SNAP, the ROS, on 2 July 2002 issued a notice under s 16(1) of the Act. In the notice the ROS informed SNAP that he was F of the opinion that a dispute had occurred among the office bearers of SNAP, as a result of which he is not satisfied of the identity of the persons who have been properly constituted as the office bearers of SNAP. Hence, SNAP was asked to produce evidence of a settlement of any such dispute and of a proper appointment of the lawful office bearers of SNAP or of the institution of proceedings for the G settlement of such dispute.

[9] On 19 July 2002, the Secretary General of SNAP i.e. the second applicant, responded to the ROS's notice, stating that the President's group were the lawful office bearers of SNAP and claimed that the actions taken by the group led by the H Deputy President were illegal and ultra vires the party's constitution.

[10] The ROS had also received a reply from the group led by the Deputy President. In the letter dated 26 July 2002, the Deputy President's group defended the legitimacy of their CEC meeting as well as the National Council Meeting held on 23 June 2002 and the decisions taken at the said meetings. I

[11] The ROS, by a letter dated 13 September 2002, issued another notice and this time under s 13(2) of the Act, requiring SNAP to produce evidence of settlement of the disputes and of the proper appointment of the lawful office bearers of SNAP or of the institution of proceedings for the settlement of the disputes.

[12] The President's group replied to the notice in a letter dated 22 September 2002. They reiterated their contention that they were the lawful office bearers of SNAP and the action taken by group led by the Deputy President was illegal and ultra vires the party's constitution. Further, in a letter dated 25 September 2002, the President's group presented a legal argument that the CEC which was called by the Deputy President in the absence of the President was both illegal and unconstitutional.

[13] The Deputy President's group also responded to the ROS notice under s 13(2) of the Act. In the letter dated 4 October 2002 the Deputy President's group stated that they were the lawful office bearers of SNAP and pointed out that the acts done by the President were illegal and unconstitutional.

[14] On 5 November 2002, the ROS issued his decision to cancel the registration of SNAP under s 13(1)(c)(ix) of the Act. Hence, this application by the applicants. However, on 28 November 2005, the first applicant withdrew himself as a party to the application. Thus, the application was proceeded with only by the second applicant ('applicant').

[15] Before me, the applicant relied on two main grounds to quash the decision of the ROS, namely:

(i) Procedural Unfairness.

(ii) Substantive Unfairness.

PROCEDURAL UNFAIRNESS

[16] The grounds relied by the applicant under this heading are on the issues of non disclosure of materials and the denial of reasoned decision. According to the applicant, the ROS in arriving at his decision to de-register SNAP, had considered documents not available or known to the applicant. It is the contention of the applicant that the ROS had:

(a) relied on some written representations made by the Deputy President's group who were then in but had since left SNAP; and

(b) discussions with the Deputy President's group and/or other officers in the Ministry of Home Affairs before making the said decision.

[17] Hence, it is the contention of the applicant that the non-disclosure of the documents amounted to grave deprivation of his right to be heard and therefore rendering the decision vitiated. According to him procedural fairness dictates that all materials which are being relied upon by a public authority for giving its decision against a person should be brought to his attention and be given an opportunity to deal with. The applicant cited two well known cases of *Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] MLJ 169, and*Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 to support his argument.

[18] With respect, the issue of non-disclosure is no longer an issue. I have dealt with this issue in the applicants' earlier application for discovery, where I had accepted the ROS averment that all documents pertaining to his decision making process were before the court (see *Datuk Amar James Wong Kim Hin & Anor v Pendaftar Pertubuhan* [2004] 6 MLJ 235). Hence, the allegation of non-disclosure of documents by the applicant remain a mere allegation.

[19] Further, I am of the view that the scheme of ss 16 and 13 of the Act does not require the ROS to give the applicant the right to be heard before the ROS is to 'to form an opinion that a dispute had occurred or that the ROS was not satisfied of the identity of the persons who have been properly appointed as office bearers'. To subscribe to the applicant's submission would tantamount to adding words to the sections which this court must always 'guard itself against adding words which were never intended by Parliament' (see *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114).

[20] Under this heading of procedural unfairness, it is also the contention of the applicant that he had been denied of reasoned decision. To the applicant, procedural fairness imposes a duty on public decision makers to give reason for their decisions. As the ROS, in this case, had not given his reasons in cancelling SNAP, the applicant had been deprived of his right to know the basis upon which his fate was deliberated. Such decision, is therefore, according to the applicant, liable to be struck down.

[21] With respect, I am unable to agree with the applicant. Firstly, it is an established position of the law that there is no general duty universally imposed on all decision makers to give reasons for their decision. Secondly, s 16(1) and 13 of the Act do not require the ROS to give reasons for his decision. There is no express statutory duty imposed on the ROS to give reasons to the applicant.

SUBSTANTIVE UNFAIRNESS

[22] The issues raised by the applicant under this heading are:

(i) disproportionate decision;

(ii) irrelevant consideration;

(iii) excess of jurisdiction; and

(iv) acting inconsistently.

[23] The ROS submitted that 'substantive fairness' cannot be a ground to challenge an administrative decision. The case of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72, was cited to support the argument, where Mohamed Dzaiddin 'FCJ' (as he then was) said:

> We pause to note here that the Court of Appeal seems to introduce the doctrine of substantive fairness as a separate ground in its review of the administrative decision of the State Authority under the Act by invoking art. 8(1) read together with art 5(1) of the Federal Constitution. The court also relied on *R Rama Chandran*.

In our view, Parliament having excluded judicial review under the Act, it is not permissible for our courts to intervene and disturb a statutorily unreviewable decision on the basis of a new amorphous and wide ranging concept of substantive unfairness as a separate ground of judicial review which even the English courts in common law have not recognised.

[24] The above authority, clearly support ROS's position and I am in no position to disagree with the Federal Court's decision.

[25] Further, I am of the view that the issues raised by the applicant under this heading is devoid of any merit. The first issue raised by the applicant was that the decision of the ROS to de-register SNAP was disproportionate and too severe a measure to be taken against a society as established as SNAP. My short answer is that, it is not the duty of this Court to substitute its own view as to what is the appropriate or lesser measure ought to be taken by the ROS.

[26] The second and third issues raised by the applicant under this heading is that the ROS had taken irrelevant considerations in arriving to an opinion that a dispute had risen in SNAP and hence had acted in excess of jurisdiction in de-registering SNAP. With respect, I am unable to hold as such. The affidavit of the first applicant in support of this application, clearly shows the existence of a 'dispute' between the group led by the President and the other group led by the Deputy President. The first applicant in his letter to the ROS confirmed the dispute when he stated that in the absence of the President, another team led by the Deputy President had tried to 'usurp the leadership' by unconstitutional acts such as to convene CEC meeting, National Council Meeting and the EGM. In another exhibit, ie a letter from the other group clearly shows that a parallel CEC led by the Deputy President held a National Council Meeting on 23 June 2002 and had passed several resolutions including the appointment of the Deputy President assuming the post and duties as Acting President and suspending the duties of the President and several others.

[27] To me, on the facts of this case it is beyond doubt that a dispute does exist within SNAP. Accordingly, the ROS was right to issue the notice under s 16 (1) and subsequently under 13 (2) of the Act. As the ROS was not furnished with the evidence of settlement of the dispute or institution of proceedings for settlement of the dispute, the ROS was right to cancel the registration of SNAP. To me, what the ROS did was merely complying with the statutory provisions of the Act.

[28] The second and third issues raised by the applicant under this heading is that the ROS had taken irrelevant considerations in arriving to an opinion that a dispute had risen in SNAP and hence had acted in excess of jurisdiction in de-registering SNAP. With respect, I am unable to hold as such. The affidavit of the first applicant in support of this application, clearly shows the existence of a 'dispute' between the group led by the President and the other group led by the Deputy President. The first applicant in his letter to the ROS confirmed the dispute when he stated that in the absence of the President, another team led by the Deputy President had tried to 'usurp the leadership' by unconstitutional acts such as to convene CEC meeting, National Council Meeting and the EGM. In another exhibit i.e. a letter from the other group clearly shows that a parallel CEC led by the Deputy President held a

National Council Meeting on 23 June 2002 and had passed several resolutions including the appointment of the Deputy President assuming the post and duties as Acting President and suspending the duties of the President and several others.

[29] The final issue raised by the applicant under this heading is that the ROS had acted inconsistently from his previous practice. Reference was made to the case of *PV Das (on behalf of himself and the People's Progressive Party) v Pendaftar Pertubuhan Malaysia* [2000] 1 MLJ 691, whereby the ROS did not issue the notice under s 16 of the Act or cancel the registration of the People Progressive Party, although the party was fragmented into three factions, one faction was led by Dato' Mak Hon Kam, another by Dato' Kaveas and other by PV Das. On this issue, one can only speculate, as the applicant had never raised this issue in his application or in the supporting affidavit to enable the ROS to throw some light on the issue. As such, there is no evidence before this court as to whether the facts are completely the same so as to insinuate that the ROS had acted inconsistently.

[30] For the above reasons, I am of the view that there is no merit in the application. Accordingly, the application is dismissed with costs.

Application dismissed with costs.

Reported by Sally Kee